

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

VALLEY BOYS, INC. d/b/a
VALLEY BOYS ROOFING,
Assignee,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY
COMPANY, incorrectly named as
STATE FARM INSURANCE
COMPANY,

Defendant.

CASE NO.: _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant State Farm Fire and Casualty Company ("State Farm"), incorrectly named as "State Farm Insurance Company," by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, hereby removes this action from the District Court of Douglas County, Nebraska, where the action is now pending, to the United States District Court for the District of Nebraska. In support thereof, State Farm states as follows:

BACKGROUND

1. Plaintiff Valley Boys Inc. d/b/a Valley Boys Roofing ("Valley Boys") initiated this suit on April 28, 2014 in the District Court of Douglas County, Nebraska against State Farm. The case is styled, "VALLEY BOYS INC. d/b/a VALLEY BOYS ROOFING, Assignee, Plaintiff, vs. STATE FARM INSURANCE COMPANY, Defendant," and is assigned Case Number D01CI140003415. (Complaint and Demand for Jury Trial, attached hereto as Exhibit 1.)

2. Valley Boys effected service on State Farm on May 6, 2014.

3. Valley Boys alleges that one hundred fifty-four (154) Nebraska State Farm insureds sustained covered losses to their homes in a hailstorm in April of 2013 (the "Insureds"). (Exhibit 1 at ¶¶ 7, 11-13 and p. 14-20.) Valley Boys further alleges that each of the Insureds executed "Assignments of Insurance Claim with Valley Boys." (*Id.* at ¶¶ 9, 10 and Exhibit B attached thereto.)

4. Without identifying what provisions of the Insureds' policies State Farm supposedly breached, Valley Boys contends that State Farm owes Valley Boys payment for various line items Valley Boys has placed on its estimates for roof repairs, including: "residential supervisor / project management," "labor to fill and pull building permit," "starter shingles," "contractor overhead and profit," "OSHA fall protection," and "final yard clean up." (*Id.* at ¶¶ 17-101.) Valley Boys does not allege that any of the Insureds actually paid any of these supposed costs. Nevertheless, Valley Boys demands a minimum of \$3,099,249.33 in compensatory damages on its breach-of-contract count. (*Id.* at p. 14-20.) Valley Boys states that the amount "is likely to increase with discovery and further investigation." (*Id.* at p. 14.)

5. Valley Boys also purports to bring a bad faith claim against State Farm regarding the settlement of the Insureds' claims. (*Id.* at ¶¶ 102-09.) Valley Boys again demands \$3,099,249.33 in damages, plus attorneys' fees, related to State Farm's purported bad faith claims handling practices in respect to the claims of the assignors-insureds. (*Id.* at p. 22.)

THIS COURT HAS DIVERSITY JURISDICTION OVER THIS ACTION

6. The Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a), because complete diversity exists between the parties and the amount in controversy exceeds \$75,000.00.¹

COMPLETE DIVERSITY OF CITIZENSHIP EXISTS BETWEEN THE PARTIES

7. Plaintiff Valley Boys is a Nebraska corporation with its principal place of business located at 10547 Bondesson Circle, Omaha, Nebraska, 68123. (*Id.* at ¶ 5.) As a result, Valley Boys is a citizen of the State of Nebraska.

8. Defendant State Farm is a stock insurance company incorporated under the laws of the State of Illinois, and its principal place of business is in Bloomington, Illinois. (See Affidavit of Jim Larson, attached hereto as Exhibit 2.) As a result, State Farm is a citizen of the State of Illinois.

9. There is thus complete diversity of citizenship between the parties. See *Cascades Dev. of Minn., LLC v. Nat. Spec. Ins.*, 675 F.3d 1095, 1100 (8th Cir. 2012) (analyzing assignee's citizenship for diversity purposes); see also *Hartford Accident & Indem. Co. v. Sullivan*, 846 F.2d 377, 382-83 (7th Cir. 1988) (holding that diversity jurisdiction existed where assignee diverse from opposing party).

¹ State Farm removes this action based on Valley Boys' allegations in its Complaint, but reserves the right to challenge all aspects of those allegations, including the purported assignment of each of the Insureds' claims and the joinder of the 154 claims. See *Abraham v. Am. Home Mortgage Serv., Inc.*, 947 F. Supp. 2d 222, 232-34 (E.D.N.Y. 2013) (granting motion to sever claims based on "hundreds of mortgage loan transactions," and holding that defendant's removal of action based on CAFA mass action provision did not preclude argument that claims were misjoined).

THE AMOUNT OF THE MATTER IN CONTROVERSY EXCEEDS

10. In addition to the complete diversity between Valley Boys and State Farm, this Court also has jurisdiction over this action under 28 U.S.C. § 1332(a) because Plaintiff seeks damages that exceed \$75,000.00.

11. Valley Boys demands \$3,099,249.33 in each of the two counts of its Complaint, one for breach-of-contract, and the other for bad faith claims handling. It is thus facially apparent from Valley Boys' Complaint that the amount in controversy exceeds \$75,000.00, exclusive of interests and costs. *See Bowden v. Burnham*, 59 F. 752, 755 (8th Cir. 1894) (holding that the "requisite amount and the citizenship necessary to confer the jurisdiction are united in the plaintiffs; and the jurisdiction is not affected by the fact that the several assignors of the claims could not have maintained separate suits thereon, because the claim of each" did not satisfy the amount-in-controversy requirement); *see also Alpine Glass, Inc. v. State Farm Fire and Casualty Company*, Civ. No. 12-2867, 2013 WL 2434942, at *2 (D. Minn. June 4, 2013) (holding that insureds' claims assigned to auto glass repairer properly aggregated to satisfy the amount in controversy requirement).

12. Therefore, this Honorable Court has jurisdiction over this civil action under 28 U.S.C. § 1332, in that diversity of citizenship exists within the meaning of the aforementioned statute and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, thereby entitling State Farm to remove this action to the Federal Court sitting in the District of Nebraska. *See* 28 U.S.C. §§ 107, 1441(a).²

² To the extent the Court has any questions regarding the showing herein, State Farm respectfully requests the opportunity to respond to any such inquiry, including the taking of appropriate jurisdictional discovery.

STATE FARM HAS COMPLIED WITH REMOVAL PROCEDURES

13. This Notice of Removal was filed within thirty (30) days of service of Valley Boys' Complaint on State Farm. A true copy of this Notice of Removal is concurrently filed with the Clerk of the District Court of Douglas County, Nebraska, as required by 28 U.S.C. §1446(d).

14. Copies of all process, pleadings, and orders filed in the Douglas County action are attached hereto as Exhibit 3, in accordance with 28 U.S.C. § 1446(a). There are no matters pending in the state court requiring resolution.

WHEREFORE, Defendant State Farm Fire and Casualty Company, incorrectly named as State Farm Insurance Company, desiring to remove this cause to the United States District Court for the District of Nebraska, being the district for the county in which said action is pending, pray that the filing of this Notice of Removal with the Clerk of the District Court of Douglas County, Nebraska shall effect the removal of said suit to this Court.

DATED this 29th day of May, 2014.

Respectfully submitted,

/s/ Rex A. Rezac

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served by e-mail and by regular U.S. mail, postage prepaid, this 29th day of May, 2014 to:

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